

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT NAKAYA,

Plaintiff,

No. C 09-0208 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Warden M. S. EVANS; Director M. CATES;  
Governor A. SCHWARZENEGGER; and  
Dr. C. LEE, Chief Medical Officer,

Defendants.

Plaintiff, a prisoner at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee.

Venue is proper in this district because a substantial part of the events giving rise to the action occurred in this district. See 28 U.S.C. § 1391(b).

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the  
2 grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (per  
3 curiam) (citations omitted). Although in order to state a claim a complaint "does not need  
4 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
5 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation  
6 of the elements of a cause of action will not do. . . . Factual allegations must be enough to  
7 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S.  
8 Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to  
9 state a claim for relief that is plausible on its face." *Id.* at 1974. The United States  
10 Supreme Court has recently explained the "plausible on its face" standard of *Twombly*:  
11 "[w]hile legal conclusions can provide the framework of a complaint, they must be  
12 supported by factual allegations. When there are well-pleaded factual allegations, a court  
13 should assume their veracity and then determine whether they plausibly give rise to an  
14 entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
16 elements: (1) that a right secured by the Constitution or laws of the United States was  
17 violated, and (2) that the alleged deprivation was committed by a person acting under the  
18 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## 19 **B. Legal Claims**

20 In his first claim, plaintiff complains that the prison is overcrowded, in that two  
21 inmates are being housed in a cell designed for one. He asserts that this creates "obvious  
22 health and safety issues." Section 1983 is available only for violations of federal law,  
23 usually the Constitution. That a cell may have been designed for one occupant but now  
24 houses two prisoners does not in itself implicate the Constitution, in that conditions might  
25 still be such as not to constitute cruel and unusual punishment. Furthermore, plaintiff's  
26 reference to health and safety is conclusory, and thus under *Iqbal* insufficient to state a  
27 claim. This claim will be dismissed with leave to amend.

28 In his second claim, headed "[l]ockdowns," plaintiff contends that he has been

1 confined to his cell for long periods, “without adequate exercise, fresh air and adequate  
2 showering.” Once again, these claims are conclusory and thus inadequate to state a claim  
3 under *Iqbal*. This claim will be dismissed with leave to amend.

4 In his third claim, plaintiff contends that he has not received any rehabilitation.  
5 There is no constitutional right to rehabilitation. *Rizzo v. Dawson*, 778 F.2d 527, 530 (9th  
6 Cir. 1985). This claim will be dismissed without leave to amend.

7 In his fourth claim, plaintiff contends that he has received no vocational training.  
8 There is no constitutional right to vocational training. *Id.* This claim will be dismissed  
9 without leave to amend.

10 In his fifth claim, plaintiff contends that his health has been affected by close  
11 confinement with inmates with illnesses such as hepatitis, AIDS, and influenza. He  
12 provides no locations and time frame, or any other details. This is insufficient to state a  
13 claim. He also contends that he had to drink contaminated water caused by failure of the  
14 water treatment system, because only ten ounces of bottled water was provided per day.  
15 Again, he does not say when this happened or for how long it continued, nor does he allege  
16 any facts that would suggest that the amount of clean water was inadequate. This claim  
17 will be dismissed with leave to amend.

18 In his sixth claim, plaintiff contends that he was discriminated against because  
19 inmates like him, who have to serve eighty-five percent of their sentences, are given less  
20 priority for jobs than inmates who are under the fifty-percent good time regime. He alleges  
21 that this is due to California’s “sentencing structure.” It is unclear how that would be, or if  
22 so, how the defendants could be responsible for it. This claim will be dismissed with leave  
23 to amend. He also contends that he has been discriminated against in that when he finally  
24 was given a job, he was not paid for it, whereas other prisoners were. He does not allege  
25 the basis for the purported discrimination, so this claim must be dismissed with leave to  
26 amend. He also contends that he has been discriminated against because of his gender in  
27 that he is not allowed to order certain items by mail-order, for instance Certs, Lifesavers,  
28 Honey, and catsup, whereas female prisoners are. This is sufficient to state a claim.

**CONCLUSION**

1. For the foregoing reasons, the complaint is **DISMISSED** with leave to amend, as indicated above, within thirty days from the date of this order. The amended complaint must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of these claims.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: October 22, 2009.

  
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PHYLLIS J. HAMILTON  
United States District Judge